



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended	04/29/04	Bill No:	SB 1614
Tax:	Motor Vehicle Fuel Tax Diesel Fuel Tax	Author:	Torlakson
Board Position:		Related Bills:	AB 2526 (Oropeza) AB 2847 (Oropeza) AB 3104 (Firebaugh)

BILL SUMMARY

This bill would raise the Motor Vehicle Fuel Tax (gasoline) and Diesel Fuel Tax from 18 cents per gallon to 23 cents per gallon, provided the retail selling price of gasoline decreases to below \$2 per gallon.

Summary of Amendments

The April 29 amendments remove the provisions creating a new fee on gasoline and diesel fuel and added the provisions that would increase the gasoline and diesel fuel tax rates from the current 18 cents per gallon to 23 cents per gallon, provided the retail selling price of regular unleaded gasoline decreases to below \$2 per gallon. Amendments also added floor stock tax provisions for any person owning 1,000 gallons or more of fuel for sale.

ANALYSIS

Current Law

Current federal law (Section 4081 of the Internal Revenue Code) imposes an excise tax on producers of \$0.184 per gallon on the removal of gasoline from a terminal or refinery, or upon importers for the entry of gasoline into the United States. This section also imposes an excise tax on undyed diesel fuel at a rate of \$0.244 per gallon.

Under the Motor Vehicle Fuel Tax Law (Part 2, Division 2 of the Revenue and Taxation Code, commencing with Section 7301), the state imposes an excise tax of \$.018 per gallon on the removal of motor vehicle fuel (gasoline) at the refinery or terminal rack, upon entry into the state, and upon sale to an unlicensed person.

Under the Diesel Fuel Tax Law (Part 31, Division 2 of the Revenue and Taxation Code, commencing with Section 60001) the state imposes an excise tax of \$.18 per gallon on the removal of diesel fuel at the refinery or terminal rack, upon entry into the state, and upon sale to an unlicensed person.

The Sales and Use Tax Law imposes a sales or use tax on the gross receipts from the sale of, and on the sales price of, tangible personal property, unless specifically exempted by statute. Existing law expressly *includes* within the definition of “gross receipts” and “sales price” the amount of any tax imposed by the United States upon producers and importers and the amount of any tax imposed by the state under the Motor Vehicle Fuel Tax Law. The law expressly *excludes* from the definition of “gross

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receipts” and “sales price” the amount of any tax imposed upon diesel fuel pursuant to Part 31 (commencing with Section 60001).

Therefore, under the existing Sales and Use Tax Law, the computation of sales tax on the sale of gasoline includes the 18.4 cents per gallon imposed at the federal level and the 18 cents per gallon imposed by the State. With respect to sales of diesel fuel, the computation of sales and use tax includes only the 24.4 cents per gallon imposed at the federal level.

Proposed Law

This bill would amend Section 7360 of the Revenue and Taxation Code to increase the Motor Vehicle Fuel Tax rate from 18 cents per gallon to 23 cents per gallon, provided the retail selling price of regular unleaded gasoline, as reported by the California Energy Commission, falls below \$2 per gallon. This bill would also impose a floor stock tax at a rate of 5 cents per gallon on any blender, wholesaler or retailer owning 1,000 gallons or more of tax paid fuel for sale.

This bill would also amend Section 60050 of the Revenue and Taxation Code to increase the Diesel Fuel Tax rate from 18 cents per gallon to 23 cents per gallon, provided the retail selling price of regular unleaded gasoline, as reported by the California Energy Commission, falls below \$2 per gallon. This bill would also impose a floor stock tax at a rate of 5 cents per gallon on any blender, wholesaler or retailer owning 1,000 gallons or more of tax paid fuel for sale.

The provisions in this bill would become operative immediately.

Background

In 1990, voters approved Senate Constitutional Amendment 1 (Proposition 111) at the June direct primary election. Approval of this measure made operative Assembly Bill 471 (Ch. 106, Stats. 1989) and Senate Bill 300 (Ch. 105, Stats. 1989). These bills, among other things, increased the rate of tax imposed on most motor vehicle fuels from \$0.09 to \$0.14 per gallon, effective August 1, 1990. Further, on January 1, 1991, and each January 1 through 1994 thereafter, the excise tax increased by \$0.01 per gallon to the current \$0.18 per gallon.

Assembly Bill 653 (Papan), introduced during the 1997 Legislative Session, contained a proposal to index the per gallon tax on gasoline and diesel fuel according to the CCPI. AB 653 failed to pass out of the Assembly Committee on Transportation.

Assembly Bill 2114 (Longville), introduced during the 2000 Legislative Session, would have provided for an annually adjusted excise tax rate on gasoline and diesel fuel based on the percentage change in the CCPI. However, those provisions were removed from the May 17, 2000 version of the bill.

Senate Bill 541 (Torlakson), introduced during the 2003 Legislative Session, would have provided for an annually adjusted excise tax rate on gasoline and alternative fuels based on the percentage change in the California Consumer Price Index (CCPI). SB 541 failed to pass out of the Senate Committee on Transportation.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author. The purpose of this bill is to raise revenue to fund needed highway construction and maintenance projects in addition to environmental programs that mitigate the air impacts of motor vehicles.
2. **Summary of amendments.** The April 29 amendments removed the provisions creating a new fee on gasoline and diesel fuel and added the provisions that would increase the Motor Vehicle Fuel Tax rate and the Diesel Fuel Tax rate from the current 18 cents per gallon to 23 cents per gallon, provided the retail selling price of regular unleaded gasoline decreases to below \$2 per gallon. Amendments also added floor stock tax provisions for any person owning 1,000 gallons or more of fuel for sale.
3. **Floor stock provisions.** This bill contains a floor stock tax provision. A floor stock tax serves to equalize the tax paid by a wholesaler or retailer on fuel inventory and those gallons purchased after the effective date of the new tax. Having a large gasoline or diesel fuel inventory before a new tax takes effect can bring a small windfall to a seller. The selling price of gasoline or diesel can be raised and attributed to the new tax, but the additional funds collected are profit and not a tax paid to the state. A floor stock tax mitigates this windfall. The floor stock tax should be imposed as of the date of the tax increase. However, the provisions in this bill call for the tax to increase on the date the retail selling price of regular unleaded gasoline falls below \$2 per gallon, but the floor stock tax is based on gallons in inventory as of January 1 of any given year. This bill should be amended to impose the floor stock tax as of the same date the proposed tax increase takes effect. Also, the floor stock tax return should be due on the last day of the month following the tax increase.
4. **State sales tax revenues.** Current law provides that the Motor Vehicle Fuel Tax is subject to sales and use tax, so an increase in the Motor Vehicle Fuel Tax rate would result in additional sales and use tax revenues. However, the Diesel Fuel Tax is specifically excluded from the measure of sales and use tax, so the proposed increase in the Diesel Fuel Tax rate would have no impact on sales and use tax revenues.
5. **California Energy Commission.** This bill provides that the Motor Vehicle Fuel Tax and Diesel Fuel Tax increase would only take effect if the retail selling price of regular unleaded gasoline, as reported by the California Energy Commission, falls below \$2 per gallon. As of May 17, the California Energy Commission reports the retail selling price of regular unleaded gasoline as \$2.269 per gallon. The California Energy Commission issues the statewide retail price for unleaded gasoline on a weekly basis. The most recent weekly report showing a retail selling price under \$2 per gallon was the report issued February 16, 2004.
6. **Immediate effective date could be problematic.** This bill provides that the proposed tax increase would not occur unless and until the retail price for regular unleaded gasoline decreases to less than \$2 per gallon. As the retail price report is issued weekly every Monday, the tax increase would become effective immediately upon the issuance of the price report showing the retail price below \$2 per gallon. This would not allow the Board sufficient time to notify affected fuel sellers, modify returns, and complete other administrative functions necessary as part of a tax

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increase. Fuel sellers would also not have sufficient notice to ascertain the amount of fuel in inventory for the floor stock tax provision. It is recommended that the bill be amended so the proposed tax increase becomes operative on the first day of the first calendar quarter commencing more than 90 days after the effective date.

7. **What happens if the retail price goes back up?** This bill provides that the proposed tax increase shall not occur unless and until the retail price decreases to less than \$2 per gallon, based on the retail price for a gallon of regular unleaded gasoline, as reported by the California Energy Commission. However, this bill does not specify what would happen if the retail price were to again rise above \$2 per gallon. Would the tax increase remain in effect, or would the rate go back to 18 cents per gallon?
8. **Related Legislation.** Assembly Bill 2526 (Oropeza) would require the Board to transmit an amount equal to one-quarter of one cent (\$0.0025) per gallon of diesel fuel tax into the Carl Moyer Memorial Air Quality Standards Attainment Trust Fund (Carl Moyer Fund). Assembly Bill 2847 (Oropeza) would impose an unspecified fee amount per gallon on gasoline and diesel fuel until January 1, 2008. Assembly Bill 3104 (Firebaugh) would impose an unspecified fee amount per gallon on gasoline and diesel fuel.

COST ESTIMATE

A detailed cost estimate is pending. However, the Board would incur costs related to this measure for notifying taxpayers, developing returns, computer programming, developing and carrying out compliance and audit efforts to ensure proper reporting, and investigative efforts.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

Based on statistics compiled from the Board's fuel reports, total gasoline and diesel gallon consumption for the 2003 calendar year was 18.1 billion gallons (gasoline = 15.5 billion gallons, diesel = 2.6 billion gallons). If the price of fuel decreased below \$2 per gallon over an entire year, this bill would generate about \$775 million in motor vehicle fuel tax revenue (15.5 billion x \$0.05) and \$130 million in diesel fuel tax revenue (2.6 billion x \$0.05).

In addition to the revenue generated above, a proposed floor stock tax would be imposed. Prior floor stock taxes on fuel have shown that approximately 3 days worth of fuel would be on hand and subject to the floor stock tax. This would amount to 127.4 million gallons of motor vehicle fuel (15.5 billion / 365 days x 3 days) and 21.4 million gallons of diesel fuel (2.6 billion / 365 days x 3 days). The revenue generated from imposing a floor stock tax on motor vehicle fuel amounts to \$6.4 million (127.4 million x \$0.05), and on diesel fuel amounts to \$1.1 million (21.4 million x \$0.05).

Additionally, the increase in the motor vehicle fuel tax would be subject to the sales and use tax. However, the increase in the diesel fuel tax would be exempt from the sales and use tax. The additional sales and use tax revenue is estimated as follows:

	Motor Vehicle Fuel Tax Increase	Motor Vehicle Fuel Floor Stock Tax
Motor Vehicle Fuel Tax Revenue	\$ 775 million	\$ 6.4 million
State (5.25%)	40.7	.34
Local (2.0%)	15.5	.13
Special District (0.67%)	5.2	.04
Total	<u>\$ 61.4 million</u>	<u>\$ 0.51 million</u>

Revenue Summary

The total estimated revenue gain from increasing the motor vehicle fuel tax rate and the diesel fuel tax rate to 23 cents per gallon, the floor stock tax revenue and the sales and use tax revenue imposed on the motor vehicle fuel tax would result in the following:

	Motor Vehicle Fuel Tax Increase	Motor Vehicle Fuel Floor Stock Tax	Diesel Fuel Tax Increase	Diesel Fuel Floor Stock Tax	Total
	(millions)				
Motor Vehicle Fuel Tax and Diesel Fuel Tax revenue	\$ 775	\$ 6.4	\$ 130	\$ 1.1	\$912.5
State (5.25%)	40.7	.34			\$41.04
Local (2.0%)	15.5	.13			\$ 15.63
Special District (0.67%)	5.2	.04			\$ 5.24
Total sales and use tax	<u>\$61.4</u>	<u>\$ 0.51</u>			<u>\$ 61.91</u>
Total	<u>\$836.4</u>	<u>\$ 6.91</u>	<u>\$ 130</u>	<u>\$ 1.1</u>	<u>\$ 974.41</u>

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